

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

\* \* \*

FREDERICK OMOYUMA SILVER,

Plaintiff,

v.

CANDICE KATIE TOWNER,

Defendant.

Case No. 2:19-cv-00637-RFB-DJA

**REPORT & RECOMMENDATION**

The Court has a duty to ensure that it has subject matter jurisdiction over the dispute before it, an issue it may raise at any time during the proceedings. *See, e.g.*, Fed. R. Civ. P. 12(h)(3). Federal courts are courts of limited jurisdiction and possess only that power authorized by the Constitution and statute. *See Rasul v. Bush*, 542 U.S. 466, 489 (2004). “A federal court is presumed to lack jurisdiction in a particular case unless the contrary affirmatively appears.” *Stock West, Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1225 (9th Cir. 1989). “The party asserting federal jurisdiction bears the burden of proving that the case is properly in federal court.” *McCauley v. Ford Motor Co.*, 264 F.3d 952, 957 (9th Cir. 2001) (*citing McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936)).

In this case, Plaintiff appears to be attempting to remove a state court action concerning the payment of child support and request reconsideration of the judgment entered solely on the basis that he is a resident of Texas. *See, e.g.*, Docket No. 1-1 at 2. The complaint does not purport to bring a claim arising under federal law, nor is there any showing that diversity jurisdiction exists in this case as the judgment at issue does not rise to the amount in controversy threshold (\$75,000.00). *See* 28 U.S.C. §§ 1331, 1332. The complaint does not establish this Court’s subject matter jurisdiction and it is clear that amendment cannot cure that deficiency.

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**RECOMMENDATION**

**IT IS HEREBY RECOMMENDED** that the case be **DISMISSED** without prejudice to Plaintiff seeking relief in state court as this Court lacks subject matter jurisdiction.

**IT IS FURTHER RECOMMENDED** that Plaintiff's application to proceed *in forma pauperis* (ECF No. 1) and Plaintiff's Motion to File Electronically (ECF No. 4) be **DENIED** as moot.

**NOTICE**

This report and recommendation is submitted to the United States District Judge assigned to this case under 28 U.S.C. § 636(b)(1). A party who objects to this report and recommendation may file a written objection supported by points and authorities within fourteen days of being served with this report and recommendation. Local Rule IB 3-2(a). Failure to file a timely objection may waive the right to appeal the district court's order. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991).

DATED: December 20, 2019



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DANIEL J. ALBREGTS  
UNITED STATES MAGISTRATE JUDGE